

ORIGINAL

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FILED

FEB 21 2008

RICHARD W. WILKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

EDL

SHERI GARAY,

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY OF
AMERICA, and DOES 1-10,

Defendants.

CV

08

1059

CASE NO.

**NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT**

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT, AND TO
PLAINTIFF AND HER ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA (hereinafter "UNUM"), hereby removes the above-entitled civil action from the Superior Court of the State of California for the County of Contra Costa to the United States District Court for the Northern District of California.

This case is being removed pursuant to 28 U.S.C. §§ 1331, 1332, and 1441, *et seq.*

UNUM states that removal is proper for the following reasons:

1. On January 4, 2008, there was filed in the Superior Court of the State of California for the County of Contra Costa the above-entitled action bearing Case

1 Number MSC08-00001 in the records and files of that court. UNUM first received notice of the
2 Summons and Complaint less than thirty days ago, on January 24, 2008. Thus, the time for
3 removing a civil action has not yet expired. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*
4 (1999) 526 U.S. 344, 354; 119 S.Ct. 1322, 1329.

5 2. Defendant UNUM is incorporated under the laws of and maintains its principal
6 place of business in the State of Maine.

7 3. Based upon information and belief, UNUM alleges that plaintiff SHERI GARAY
8 is a citizen and a resident of the State of California.

9 4. The United States District Court for the Northern District of California is a proper
10 venue in that the action being removed was filed in the Superior Court of the State of California,
11 County of Contra Costa.

12 5. This civil action is being removed to Federal Court on the basis of federal
13 diversity jurisdiction under the provisions of 28 U.S.C. Section 1332 and is one which may be
14 removed to this Court by UNUM pursuant to the provisions of 28 U.S.C. Section 1441(a) in that
15 it is a civil action wherein the amount in controversy exceeds the sum of Seventy-Five Thousand
16 Dollars (\$75,000), exclusive of interest and costs, and is between citizens of different states.
17 (Complaint, pg. 13, "Prayer")

18 6. The amount in controversy in this action far exceeds \$75,000. Plaintiff seeks
19 amounts allegedly already owed, arguing that in the course of disability payments to plaintiff,
20 UNUM asserted entitlement to a credit in the amount of at least \$74,000. See Complaint, "Facts
21 Common to All Causes of Action," ¶¶ 12, 15, 19, 21. Although plaintiff is receiving and
22 continues to receive permanent disability benefits, plaintiff alleges that "UNUM has also decided
23 to pay Plaintiff approximately \$1,000 less per month than Plaintiff is owed under the policy . . ."
24 Complaint, ¶ 31. Plaintiff claims that this \$1,000 per month is owing from March, 2002 to the
25 present time for a total of \$106,000 through January, 2008. Complaint, ¶ 41 (2). On the face of
26 plaintiff's Complaint, plaintiff claims entitlement to at least \$180,000 in past disability benefits.
27 Plaintiff further alleges that "In 2002, 2003, and 2004, for any benefits paid, UNUM had
28 improperly withheld taxes from the benefits despite the fact that Plaintiff paid the premiums

1 herself and therefore did not owe taxes on the benefits.” Complaint, ¶ 22. Plaintiff also prays
2 for general damages in excess of \$100,000 and for emotional distress which plaintiff has
3 suffered as a result of financial losses. Complaint, ¶ 41 (5) Plaintiff also seeks attorney’s fees
4 and costs, for punitive and exemplary damages, and prejudgment interest. Complaint, Prayer,
5 pg. 13. Punitive damages may be included in determining the amount in controversy. *Anthony v.*
6 *Security Pac. Fin’l Services, Inc.*, (7th Cir. 1996) 75 F3d 311. Accordingly, that the amount in
7 controversy in this action far exceeds \$75,000 is facially apparent from the face of plaintiff’s
8 complaint. *Gaus v. Miles, Inc.*, (9th Cir. 1992) 980 F2d 564. According to plaintiff’s own
9 complaint it is more probable than not that plaintiff’s claim exceeds the jurisdictional minimum.
10 *Sanchez v. Monumental Life ins. Co.*, (9th Cir. 1996) 95 F3d 856, 860-861.

11 7. The District Court for the Northern District of California has original jurisdiction of
12 this civil action under 28 U.S.C. 1332(a)(1) because the amount in controversy exceeds the
13 jurisdictional requirement of this Court, exclusive of interest and costs, and is between citizens of
14 different states.

15 8. This Court additionally has original jurisdiction over the subject matter of this civil
16 action under 29 U.S.C. § 1331 pursuant to ERISA, 29 U.S.C. § 1001, *et seq.* Plaintiff has filed a
17 “Complaint For Breach of Contract.” Plaintiff’s cause of action is a claim for benefits under a
18 Long Term Disability Insurance Benefits policy Number 00108121 issued by UNUM to Site For
19 Sore Eyes. (the “Plan”). Complaint, ¶ 7. The Plan is part of an employee welfare benefit plan
20 within the meaning of 29 U.S.C. Section 1002(1). The enforcement of rights under the Plan is
21 governed exclusively by federal law under ERISA. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41,
22 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987).

23 9. Plaintiff seeks to recover benefits and to enforce rights under the Plan. Complaint,
24 ¶¶ 1-33.

25 10. Plaintiff alleges that she was a “beneficiary” of the Plan as defined by ERISA. 29
26 U.S.C. Section 1002(8). Complaint, ¶¶ 25-27.

27 11. The District Courts of the United States have original jurisdiction over, and federal
28 law under ERISA controls, actions brought to recover benefits and to enforce rights under

1 employee welfare benefit plans. 29 U.S.C. Section 1132(e)(1); *Pilot Life Ins. Co. v. Dedeaux*,
2 481 U.S. 41, 107 S.Ct. 1549, 95 L.Ed.2d 39 (1987). Removal of such cases to federal court is
3 proper. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987).

4 12. Attached hereto as Exhibit A is a true and correct copy of those pleadings and
5 process filed in the Superior Court of the State of California, County of Contra Costa, Case
6 No. MSC08-00001, which were served on UNUM.

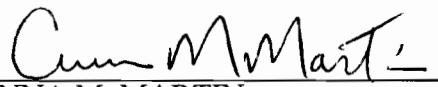
7 13. A Notice of Filing of this Notice of Removal is being filed concurrently with the
8 Superior Court of the State of California, County of Contra Costa, and is concurrently being
9 served on plaintiff.

10 **WHEREFOR**, UNUM prays that this civil action be removed to this Court from the
11 Superior Court of the State of California, County of Contra Costa.

12 RIMAC & MARTIN, P.C.

13
14
15 DATED: February 21, 2008

By:


ANNA M. MARTIN
Attorneys for Defendant
UNUM LIFE INSURANCE COMPANY
OF AMERICA

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Attorneys for Plaintiff
 SHERI GARAY

FILED

RECEIVED JAN 4 2008

JAN 24 2008

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF CONTRA COSTA

PER LOCAL RULE 5 THIS
 CASE IS ASSIGNED TO
 DEPT. 2

Case No. **C08-60001**

**COMPLAINT FOR DAMAGES and
 REQUEST FOR JURY TRIAL FOR:**

- (1) BREACH OF CONTRACT;
- (2) DECLARATORY RELIEF;
- (3) BREACH OF IMPLIED COVENANT OF
 GOOD FAITH AND FAIR DEALING.

SHERI GARAY

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY
 OF AMERICA; DOES 1-10

Defendants.

No SUMMONS ISSUED

Plaintiff SHERI GARAY (hereinafter "Plaintiff") respectfully requests a jury trial and alleges as follows:

PARTIES

1) At all times relevant to this complaint, Plaintiff is and was an adult citizen of the United States of America. During the times relevant to this complaint, Plaintiff maintained her residence in Contra Costa County, within the State of California.

2) At all times relevant to this complaint, Defendant UNUM LIFE INSURANCE COMPANY of AMERICA was a corporation doing business in the State of California under the regulation of the California Department of Insurance.

3) DOES 1-10 are fictitiously named defendants, whether individuals or corporations, with

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1 true names unknown. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
2 as DOES 1-10, inclusive, and therefore sues those defendants by such fictitious names. Plaintiff will
3 amend her complaint to allege their true names and capacities when ascertained. Plaintiff is informed
4 and believes and thereon alleges that each of the fictitiously named defendants is responsible in some
5 manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were legally
6 caused by their conduct.

7 4) UNUM LIFE INSURANCE COMPANY of AMERICA (hereinafter "UNUM") and
8 DOES 1-10 shall be collectively referred to herein as "Defendants."

9 5) At all times mentioned herein, Defendants were the agents, employees, parent
10 companies, and/or subsidiaries of one another and in doing the acts herein alleged were performing
11 within the scope and purpose of said agency and employment; in addition, each defendant has ratified
12 and approved the acts of each other defendant acting for and on behalf of the other.

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14
15 6) Up until she sold her business in January 2004 due to her disability, Plaintiff was the sole
16 proprietor of a Site for Sore Eyes business establishment located in Concord, California.

17 7) As a sole proprietor and for her benefit as a business owner, Plaintiff purchased a Long Term
18 Disability Insurance Benefits policy issued by UNUM (hereinafter "insurance benefits"). Plaintiff's
19 coverage under the plan became effective in October of 1995. Since October of 1995, Plaintiff, as a sole
20 proprietor, paid for the insurance policy premiums for herself.
21

22
23 8) Said insurance benefits provided that if Plaintiff became totally disabled from performing her
24 occupation, then she would receive 60% of her earnings, after the expiration of a 180 day waiting period,
25 for each month that she remained so disabled for a maximum of 24 months. Said insurance benefits
26 alternatively provided that if Plaintiff became unable to perform her occupation on a full-time basis, then
27 Plaintiff would still be entitled to disability benefits as long as she experienced a 20% loss in earnings.
28

1 After 24 months, Plaintiff would be entitled to continue to receive insurance benefits if she was disabled
2 from performing the duties of any gainful occupation for which she was reasonably qualified by
3 education, training, or experience. A true copy of Plaintiffs certificate of insurance issued to her by
4 UNUM is attached hereto and incorporated by reference as Exhibit 1.

6 9) Plaintiff has always paid any premiums due for her insurance benefits and duly performed all
7 other conditions precedent set forth in her certificate of insurance issued to her by UNUM.

9 10) On or about September 2001, Plaintiff became disabled from performing her duties as an
10 Optical Technician at her business, Site for Sore Eyes. Plaintiff underwent multiple surgeries for a
11 herniated disc, including surgeries in April 2002 and September 2003.

13 11) Plaintiff timely submitted her claim for UNUM for disability insurance benefits.

15 12) Unum initially paid Plaintiff disability benefits from March 4, 2002 through December 3,
16 2002 on the basis that she was totally disabled, but then stopped paying Plaintiff benefits. At that time
17 Unum determined that Plaintiff did not in fact qualify for the benefits already paid and charged Plaintiff
18 an overpayment in excess of \$29,000.

20 13) Plaintiff appealed Unum's decision regarding the overpayments its cessation of payment of
21 benefits and the overpayment throughout 2003 and 2004, and again in 2007 pursuant to Unum's re-
22 opening of the claim for evaluation under the California Regulatory Settlement Agreement. Unum did
23 not issue a final determination on the cessation of benefits and the overpayment until November 9, 2007.
24 Pursuant to these appeals, in 2007, Unum decided to pay Plaintiff benefits owed from March 4, 2002
25 through June 10, 2002 on the basis that Plaintiff was disabled under the policy during that time period
26 only.

1 14) Unum began paying Plaintiff benefits again when Unum opened a new claim for Plaintiff
2 with a new disability onset date of September 4, 2003 and a new elimination period ending March 2,
3 2004. Unum opened the new claim and required Plaintiff to wait through another elimination period
4 despite the fact that Plaintiff was disabled by the same exact condition and illness which disabled her
5 on or about August 2001.
6

7
8 15) Once Unum determined that it again owed Plaintiff benefits, Unum reduced Plaintiff's
9 monthly benefit amount for 28 months to recover the overpayment in excess of \$29,000 from the first
10 claim.
11

12 16) Unum later, in 2007, determined that it was improper to subject Plaintiff to two elimination
13 periods as her disability in 2003 was the same disability she had suffered in 2001. Unum later, in 2007,
14 determined it owed Plaintiff benefits from January 2004 onward, however Unum never paid Plaintiff
15 benefits for January and February 2004. At the same time, Unum again refused to pay Plaintiff benefits
16 from March 4, 2002 (the end of the first elimination period) through January 2004 on the basis that she
17 did not meet the definition of disability during that time period.
18

19 17) Unum, despite multiple appeals and despite the California Regulatory Settlement Agreement
20 Unum entered into with the California Department of Insurance (See Exhibit 2), has never paid and
21 continues to refuse to pay Plaintiff benefits owing from June 10, 2002 through March 2004. Unum did
22 so by refusing to consider and fully investigate claims that Plaintiff was totally disabled during the time
23 period and instead categorized Plaintiff as partially disabled. Plaintiff was entitled to benefits even if
24 only partially disabled as long as her earnings loss was 20%, however Unum improperly determined that
25 Plaintiff did not qualify for benefits despite the fact Plaintiff did suffer a 20% earnings loss. Unum
26 admits that Plaintiff was not earning money from performing any gainful activity but rather simply
27
28

1 receiving profits from the business she owned, yet Unum improperly and purposefully misconstrued the
2 policy language to regardless deny Plaintiff benefits.

3
4 18) Throughout the claims handling process, Unum has also incorrectly calculated the monthly
5 benefits owed to Plaintiff. The insurance policy requires Unum to use the most recent three years of a
6 sole proprietor's income to determine the monthly benefits amount. Unum used the tax years of 1998,
7 1999, and 2000 in order to calculate a lower basic monthly earning figure on the first claim because the
8 sole proprietorship had higher profits in the tax year 2001. Unum's method of calculating the basic
9 monthly earnings figure was improper under the insurance policy and under the California Regulatory
10 Settlement Agreement, yet Unum made a final decision on November 9, 2007 that it would not change
11 its calculation of the basic monthly earnings.
12

13
14 19) Moreover, Unum had calculated a higher basic monthly earnings figure on the second claim
15 it opened for Plaintiff in 2003, but then by its November 9, 2007 letter reversed the higher basic monthly
16 earnings amount. Because Unum decided that there should not have been a second elimination period,
17 Unum decided the basic monthly earnings amount from the first claim applied to the entire claim, up
18 through and continuing to the present and future payment of benefits. Unum then charged an
19 overpayment to Plaintiff for the difference between the higher monthly benefits amount and the lower
20 monthly benefits amount from March 2004 through to the present, resulting in an overpayment in excess
21 of \$8,000 which was immediately utilized to withhold all of Plaintiff's monthly benefit amounts until
22 paid off.
23
24
25

26 20) In February 2007, Unum had informed Plaintiff that her case was covered by the California
27 Regulatory Settlement Agreement. Then in November 2007, Unum informed Plaintiff that her case was
28

1 not covered by the California Regulatory Settlement Agreement and that its May 2007 decision pursuant
2 to the California Regulatory Settlement Agreement was void and incorrect.

3
4 21) In 2005, Unum represented to Plaintiff that she was required to apply for Social Security
5 benefits in order to continue to receive benefits under the policy when in fact the policy contained no
6 such requirement. As a result, Plaintiff applied for and was approved for Social Security benefits, which
7 resulted in a \$37,000 overpayment charged to Plaintiff.
8

9 22) In 2002, 2003, and 2004, for any benefits paid, Unum had improperly withheld taxes from
10 the benefits despite the fact that Plaintiff paid the premiums herself and therefore did not owe taxes on
11 the benefits. Unum still owes Plaintiff for taxes improperly withheld from her benefits amount and
12 improperly double charged Plaintiff for those taxes by recouping overpayment amounts at their full
13 value, not taking into account that Plaintiff had in fact received less in benefits due to the taxes
14 wrongfully withheld.
15

16
17 23) Throughout the claims handling process, Unum has constantly changed its position and
18 analysis of Plaintiff's claim and constantly misinformed Plaintiff about the insurance policy's provisions.
19 Unum issued so many contradictory decisions and statements, that it has become highly difficult if not
20 impossible for the average insured to understand what has happened on the claim and what rules govern
21 the claim. Unum's constant mishandling of Plaintiff's claim has caused Plaintiff severe financial and
22 emotional distress and has caused Plaintiff to spend significant sums on attorneys fees and to spend
23 copious amounts of her own time reviewing her claims file, including Unum's complicated and multi-
24 page letters (which refer back to old letters and deem some old letters as voided or incorrect).
25

26 /

27 /

FIRST CAUSE OF ACTION

(Breach of Contract)

(All Defendants)

24) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action as if fully set forth herein.

25) At all times material herein, a contractual relationship existed between Plaintiff and defendants, and each of them. The written contract between Plaintiff and Defendant is attached as Exhibit 1.

26) Plaintiff has performed all conditions in accordance with the terms of her insurance benefits including giving defendants due and timely notice and proof of her claim.

27) Despite Plaintiff's performance under her insurance benefits, defendants, and each of them, have failed and refused to make payments owed to Plaintiff, have improperly and illegitimately charged overpayments to Plaintiff's account, have incorrectly calculated the amount of benefits due to Plaintiff and underpaid Plaintiff, have improperly withheld taxes from Plaintiff's benefits, and have breached their promises of payment of insurance benefits in accordance with the written contract, thereby breaching their contractual obligations.

28) Defendants' breach of contract was and is a substantial factor in causing Plaintiff harm, including monetary loss and emotional distress.

WHEREFORE, Plaintiff prays for the Relief as requested in the Prayer of this Complaint.

SECOND CAUSE OF ACTION

(Declaratory Relief)

(All Defendants)

29) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action as if fully set forth herein.

30) An actual, present and justiciable controversy has arisen between the parties to this action regarding performance of obligations under the subject group insurance policy. Plaintiff was insured under their group insurance policy issued by UNUM described previously in Paragraph 8, *supra*.

31) Defendants have breached their duty to Plaintiff by failing to perform the contractual obligations owed when they failed to pay Plaintiff the full amount of benefits owing under the terms of the insurance policy. Though UNUM acknowledges that Plaintiff is currently totally disabled and eligible for benefits, UNUM continually re-assesses Plaintiff's claim in order to charge overpayments and avoid paying Plaintiff the monthly benefits due to her. UNUM has also decided to pay Plaintiff approximately \$1,000 less per month than Plaintiff is owed under the policy due to breach of contractual provisions regarding the calculation of Plaintiff's basic monthly earnings.

32) There is a dispute, *inter alia*, as to whether UNUM is currently applying incorrectly determined overpayments to Plaintiff's account, is currently paying Plaintiff at a lower monthly benefit amount than required by the contract, whether benefits are accrued and payable, and if Plaintiff is entitled to future benefits at a higher monthly benefit amount, without future offsets and overpayments being newly charged against her account for past activity on the account.

33) Plaintiff requests that this court grant relief through a declaration that defendants are to perform all contractual obligations owed including payment of all benefits both presently and

1 previously owed under the subject policies, as well as future benefits. Plaintiff requests that this
2 court state a declaration of the duties and rights of the parties to this action.

3
4 WHEREFORE, Plaintiff prays of the relief requested in the Prayer of this Complaint.

5
6 **THIRD CAUSE OF ACTION**

7 *(Breach of the Implied Covenant of Good Faith and Fair Dealing)*

8 *(All Defendants)*

9 34) Plaintiff incorporates all preceding paragraphs of this complaint into this cause of action
10 as if fully set forth herein.

11 35) The insurance benefits here at issue contained a promise by defendants in the form of an
12 implied covenant of good faith and fair dealing that, *inter alia*, required defendants to conduct a
13 thorough and objective investigation of Plaintiff's claim, and further required said defendants to give
14 equal consideration to the interests of Plaintiff, as an insured under the insurance coverage provided
15 her by defendants, as defendants would give their own interests, and to do nothing to prevent
16 Plaintiff from receiving the benefits due her of the promised insurance protection. Rather than
17 abiding by these legal obligations which defendants had to Plaintiff as an insured, they have
18 breached and violated each of them, handled Plaintiff's claim in "bad faith," violated statutes,
19 violated the California Regulatory Settlement Agreement, and otherwise acted unlawfully, and
20 knowingly declined to pay her claim when they knew it was to be paid. Plaintiff is informed and
21 believes that the actions of defendants set forth herein are standard operating procedure for
22 defendants and are regularly employed by them as a pattern and practice as a means of avoiding the
23 payment of valid claims.

24
25 36) In addition, defendants have breached these covenants in that they have:
26
27
28

- 1 (a) unreasonably delayed and denied to Plaintiff the benefits due her under the
- 2 insurance policy;
- 3
- 4 (b) failed to reasonably investigate Plaintiff's claim;
- 5
- 6 (c) breached the promise to pay benefits upon proof of disability;
- 7
- 8 (d) misrepresented pertinent facts and insurance benefits provisions pertaining to
- 9 coverage for total and partial disability;
- 10
- 11 (e) failed to acknowledge and act reasonably promptly upon communications
- 12 regarding claims arising under the insurance benefits;
- 13
- 14 (f) purposefully construed terms of the insurance policy in a manner adverse to
- 15 Plaintiff and in a manner contrary to the plain reading of the insurance policy;
- 16
- 17 (g) purposefully and constantly changed its position in regards to Plaintiff's claim to
- 18 best suit its own financial interest and to Plaintiff's detriment;
- 19
- 20 (h) purposefully failed to abide by the California Regulatory Settlement Agreement
- 21 and purposefully misinformed Plaintiff that her claim is not covered by the California
- 22 Regulatory Settlement Agreement;
- 23
- 24 (i) failed to effectuate prompt, fair, and equitable settlement of claims in which
- 25 liability has become reasonably clear;
- 26
- 27 (j) unreasonably withheld, and failed to pay monthly disability benefits due Plaintiff;
- 28

1 (k) supported and ratified the mistakes, misstatements and other wrongful conduct of
2 agents and employees at the expense of the insured and her valid claim; and
3

4 (l) compelled Plaintiff to institute litigation to recover amounts due under the
5 disability insurance benefits, which amounts are unreasonably withheld and
6 unquestionably owed;
7

8 (m) improperly utilized aggressive surveillance on Plaintiff;
9

10 (n) targeted Plaintiff's claim for denial or termination or reduction of benefits due to
11 the fact Plaintiff's claim is for a high benefit amount over a long period of continuing
12 coverage;
13

14 (o) mischaracterized the Plaintiff's occupation and/or its duties in determining
15 whether Plaintiff could perform with reasonable continuity the substantial and
16 material duties of his or her own occupation; and
17

18 (p) knowingly applied a definition of "disability" inconsistent with California case
19 law.
20

21 37) At all times during the processing of Plaintiff's claim, defendants had the resources to
22 promptly and timely evaluate this claim and pay it in a timely manner. Rather than abiding by the
23 law and fulfilling the promises which defendants made to Plaintiff, they intentionally manipulated
24 Plaintiff's claim for insurance benefits and their interpretation of the insurance policy's provisions in
25 an effort to find any basis for denying it or reducing the amount of benefits owed, and denied the
26 claim on completely erroneous, meritless, specious and phony basis.
27
28

1 38) Defendants have engaged in other wrongful conduct resulting in their breaking the law,
2 violating statutory obligations they have under the Laws of California, and breaching their good faith
3 claims handling responsibilities which they have to Plaintiff as one of their insureds. This course of
4 conduct is an accepted and directed course of wrongful and unlawful conduct in claims handling by
5 defendants, and has resulted in a pattern and practice of unlawful claims denials of disability claims
6 similar to that claim made by Plaintiff. As part of this wrongful course of conduct, defendants have
7 wrongfully and improperly denied Plaintiffs claim to the benefits she was entitled and have refused
8 and continued to refuse to pay in full what defendants promised they would pay Plaintiff should she
9 become totally disabled from performing the duties of her occupation. In addition, defendants have
10 unreasonably delayed and denied full payment of Plaintiff's claim in violation of their duties under
11 the contract and of the covenants of good faith and fair dealing contained therein.

15 39) As a result of defendants' wrongful conduct as set forth herein, Plaintiff has suffered
16 serious financial injury, including unpaid and underpaid insurance benefits afforded to her by
17 defendants, and other economic injury, as well as emotional distress and worry over her financial
18 circumstances, which were already a concern because of her medical problems. She has not only
19 worried and become anxious about her financial losses, and set back, but feared a substantial loss of
20 her assets, lost her business and is facing the loss of her home. She incurred economic and emotional
21 distress and has been forced to bring this lawsuit and incur the attorneys' fees and costs.. As a
22 proximate result of this wrongdoing by defendants, Plaintiff has suffered substantial and enduring
23 financial injury and emotional distress as alleged herein.

27 40) Defendants' conduct as described herein was malicious, oppressive and fraudulent, and
28 thereby justifies an award of punitive damages against Defendants.

1 41) As a direct and proximate result of the wrongdoing by defendants, Plaintiff has and will
2 suffer losses as hereinafter requested in the Prayer of this Complaint.
3

4 WHEREFORE, Plaintiff prays for relief as follows:

5
6 1) For monthly disability benefits due and payable to Plaintiff from June 10, 2002 through
7 March 2004;

8
9 2) For compensation in the amount of the difference between the lower monthly benefit
10 amount determined by Defendants and the higher monthly benefit amount actually owed to
11 Plaintiff from March 2002 through the present and continuing in the future;

12
13 3) For compensation for taxes wrongfully withheld from Plaintiff's benefits;

14 4) Compensation for all financial injury proximately caused by the wrongdoing of defendants
15 as proven at trial;

16
17 5) For general damages, in excess of \$100,000, for emotional distress which Plaintiff has
18 suffered as a result of the financial losses, wrongdoing of defendants and injury proximately
19 caused by defendants;

20
21 6) For attorneys fees;

22
23 7) For punitive damages because of the malice, oppression and fraud of defendants in an
24 amount appropriate to punish them and to deter them and others from similarly acting;

25
26 8) For costs of suit incurred herein;

27
28 9) For prejudgment interest as determined is appropriate under the law; and

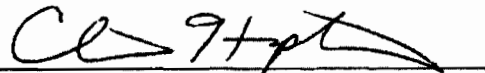
1 10) For such other and further relief as is appropriate based on the above.
2
3
4

5 DATED:

1-3-08

LAW OFFICES OF JOHN F. MARTIN
A Professional Corporation

6
7 By:



8 CHRISTINE HOPKINS, ESQ.
9 Attorney for Plaintiff Sheri Garay
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BBEC

Existing Claims

BENEFITS

Enter Action and press Enter.

 Action . . : _ (1=Add Clmt 2=Reassign)
 Below Action: _ (3=Claimant 4=Mg Clm 5=Clm Stat 6=Comp 7=Reg Sch
 8=Sp Comp 9=Sp Sch 10=Pymt Hst 11=Overpymt 12=ExistPH 13=Find Ctc
 14=Prg St 15=Reasg 16=Payee 17=Waiver 18=Accum 19=W4 Tax Calc)
 Act Claimant Clm ID Evt Owner Birth Dt Policy Prd Typ
 _ Garay, Sheri 0099243598 OP CPI06 07/17/1952 00108121 LTD
 _ Garay, Sheri 0099872770 CL CWX04 07/17/1952 00108121 LTD

2 Claim(s) Found

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
	F9=FindClm	F11=BASMenu	

BENEFITS

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Tax ID : 051-46-2747      Tax ID Juris: US
Last  : Garay
Mid   :
Bth Dt : 07/17/1952      Prefix . . : MS
Gender . . : F           Education :
Addr1  : 3326 DORAL COURT      Addr Upd : 06/20/2002
Addr2  :                      C3MLC
Addr3  :
City   : Walnut Creek        ST/PR . . : CA
Zip    : 94598-3643          Ctry . . : US
Phone  : ( 925 ) 935-4847     Ext . . :
Fax    : (    )              Ext . . :
Dth Dt :                      Lang . . : en US
For.Nat'l : N
Bank # : 121042882          Sav/Chk: CHK
Account # : 6772569635
Command ==>
F1=Help      F2=Temp      F3=Exit      F5=Popup      F6=Cancel
F9=FindCln  F10=Nav      F11=BASMenu

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BBMC

Manage Claim

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI Page: 001
Clm ID : 0099243598 Stat Dt : More: +

Hire Dt . . : 07/01/1989 Dis Dt . . : 09/05/2001 1st Treat Dt: 09/05/2001
EE Eff Dt : 10/01/1995 Last Wrk Dt: 09/02/2001 1st Hosp Dt : _____
Benefit Dt : 09/05/2001 Delivery Dt : _____

EE ID . . . : _____
Policy . . : 00108121 Div . . . : 0001 Product . . : MINI LTD TRUST
Elig Group : 001 Choice . . : _____ Product Line: LTD
Report Loc : _____ Report Group: _____
Occ Code . . : 716 Job Title : OPTICIAN
Pri ICD9 . . : 722.0 ICD9 Desc : CERVICAL DISC DISPLACEMENT
Sec ICD9 . . : _____ Ill/Inj . . : INJ Work Rlt: N Work Type . . : _____

Receive Dt : 06/19/2002 EE Form . . : Y ER Form : Y Medical Info : Y
Rider . . . : _____

Command ==>

F1=Help F2=LogWarns F3=Exit F5=Popup F6=Cancel
F8=NextClm F9=FindClm F10=Nav F11=BASMenu

BBC2

Manage Claim 2

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI
Clm ID : 0099243598
Dis Dt . : 09/05/2001 Dis Age . : 49 Curr Age : 55
Policy . : 00108121 Time Accum : 59 M 9 D Total Paid: 53,923.41
Div . : 0001 Div Name . : NEW AGE OPTICAL DBA
Div Eff : 10/01/1995 Div Term . :
Def Of Dis : 2 YEAR OWN OCC W/RESIDUAL

EE Post-Tax%: 100.00 Earnings: 8329.06 Mode . : MO
Plan EP: 180 D 03/03/2002 Plan Dur: 07/16/2017
Ovrd EP: D 65 A
Ovrd Dur: D

Res Dt . : 07/16/2017 Part RTW Dt:
Work Unit: ADL Loss . : N Full RTW Dt:

Command ==>
F1=Help F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . : _
10/04/2007	CWX04	G122		OP Payment in proc	Reopen - new info receiv	
05/09/2007	#PS1TWH	SCRU	03/10/2003	CL Termination	173 No Loss of Earnings	
05/09/2007	J1CLC	SCRU		OP Payment in proc	Reopen - new info receiv	
05/08/2007	J1CLC	SCRU	03/09/2003	CL Termination	173 No Loss of Earnings	
05/08/2007	J1CLC	SCRU		OP Payment in proc	Reopen - new info receiv	
08/18/2006	CBA06	PFSS	10/16/2003	CL Termination	190 Transfr of Liability	
10/30/2003	C26MG	GORT	10/16/2003	CL Termination	ERISA upheld	
04/04/2003	C10AA	GINT		NT ERISA pending		
02/28/2003	C26MG	GORT	12/04/2002	CL Termination	RTW earnings exceed max	
08/02/2002	C26MG	GORT		OP Payment in proc	Liability accepted	
06/19/2002	C3MLC	GINT		OP Ready for liabi		

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 002

More: -

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . : _
06/19/2002	C3MLC	GINT		NT Missing require		

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F9=FindClm

F10=Nav

F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	BB15	User Detail	LTD BENEFITS
10/04/2007	CW	User	: CWX04	info receiv
05/09/2007	#P	User Name	: Popovich, Philip	of Earnings
05/09/2007	J1	Ben Office	: G122	info receiv
05/08/2007	J1			of Earnings
05/08/2007	J1			info receiv
08/18/2006	CB		F3=Exit F6=Cancel	of Liability
10/30/2003	C26MG	GORT	10/16/2003 CL Termination	ERISA upheld
04/04/2003	C10AA	GINT	NT ERISA pending	
02/28/2003	C26MG	GORT	12/04/2002 CL Termination	RTW earnings exceed max
08/02/2002	C26MG	GORT	OP Payment in proc	Liability accepted
06/19/2002	C3MLC	GINT	OP Ready for liabi	

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	BB15	User Detail	LTD BENEFITS
10/04/2007	CW		User : #PS1TWH	info receiv
05/09/2007	#P		User Name : White, Thomas A.	of Earnings
05/09/2007	J1		Ben Office: C111	info receiv
05/08/2007	J1			of Earnings
05/08/2007	J1		F3=Exit	info receiv
08/18/2006	CB		F6=Cancel	of Liability
10/30/2003	C26MG	GORT 10/16/2003	CL Termination	ERISA upheld
04/04/2003	C10AA	GINT	NT ERISA pending	
02/28/2003	C26MG	GORT 12/04/2002	CL Termination	RTW earnings exceed max
08/02/2002	C26MG	GORT	OP Payment in proc	Liability accepted
06/19/2002	C3MLC	GINT	OP Ready for liabi	

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCS

Claim Status

BENEFITS

 Claimant: Garay, Sheri

Page: 001

More: +

Create Dt	Us	BB15	User Detail	LTD BENEFITS	
10/04/2007	CW	User	: J1CLC		1 Avy? . : _
05/09/2007	#P	User Name	: Lewis, Carol		info receiv
05/09/2007	J1	Ben Office	: C144		of Earnings
05/08/2007	J1				info receiv
05/08/2007	J1				of Earnings
05/08/2007	J1				info receiv
08/18/2006	CB				of Liability
10/30/2003	C26MG	GORT	10/16/2003 CL Termination	ERISA upheld	
04/04/2003	C10AA	GINT	NT ERISA pending		
02/28/2003	C26MG	GORT	12/04/2002 CL Termination	RTW earnings exceed max	
08/02/2002	C26MG	GORT	OP Payment in proc	Liability accepted	
06/19/2002	C3MLC	GINT	OP Ready for liabi		

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
F8=Fwd	F9=FindClm	F10=Nav	F11=BASMenu

BENEFITS

CLN

F6=Cancel

BBRS

Regular Payment Schedule

BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Current Period

Auto: # Pymts : 34

Bgn Dt: 01/04/2008

Lead Days.....: 6

End Dt: 02/03/2008

Schd End Dt...: 11/03/2010

Rls Dt: 01/28/2008

Schedule Status . . . : APP

Dur End Dt . . : 07/16/2017

Approval Request To . : _____

Time Accum....: 59 M 9 D

Below Action: (1=Current Payment Detail 2=Mailing Instructions)

Act	Amount	Payee Name	Pymt Type	Text	Text	Text
___	3,074.60	Sheri Garay	CHK	___	___	___

Command ==>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI Page :001

More : +

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pynt #	Pynt Type	Bank	Status	Status Dt
—	12/27/2007	CLN	0.00	30534627	EOB	BOA	PAID	12/27/2007
—	11/27/2007	CLN	0.00	30284251	EOB	BOA	PAID	11/27/2007
—	10/31/2007	CLN	3,159.44	08052559	CHK	Fleet	PAID	10/31/2007
—	10/27/2007	CLN	-18,959.45	30007461	RFD	Fleet	FCOM	10/27/2007
—	10/24/2007	CLN	0.00	29990351	EOB	Fleet	PAID	10/24/2007
—	10/23/2007	OTH	18,959.45	08028371	CHK	Fleet	PAID	10/23/2007
—	10/20/2007	OTH	0.00	29954799	EOB	Fleet	PAID	10/20/2007
—	10/18/2007	OTH	0.00	29941469	EOB	Fleet	PAID	10/18/2007
—	05/09/2007	CLN	15,991.81	07562901	CHK	Fleet	PAID	05/09/2007
—	05/08/2007	CLN	5,456.61	07562389	CHK	Fleet	PAID	05/08/2007
—	08/19/2006	CLN	382.30	06822816	CHK	Fleet	PAID	08/19/2006

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI Page :002

More :-

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pymt #	Type	Bank	Status	Status Dt
---	01/09/2003	CLN	4,518.14	02481401	CHK	Fleet	PAID	01/09/2003
---	12/18/2002	CLN	4,518.14	02404907	CHK	Fleet	PAID	12/18/2002
---	12/03/2002	CLN	4,518.14	02352770	CHK	Fleet	PAID	12/03/2002
---	11/12/2002	CLN	3,102.96	02282852	CHK	Fleet	PAID	11/12/2002
---	10/02/2002	CLN	0.00	14072094	EOB	Fleet	PAID	10/02/2002
---	08/06/2002	CLN	4,518.14	01935281	CHK	Fleet	PAID	08/06/2002
---	08/05/2002	CLN	5,121.41	01929474	CHK	Fleet	PAID	08/05/2002

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F9=FindClm

F10=Nav

F11=BASMenu

BBHD

Payment History Detail

BENEFITS

Claimant: Garay, Sheri Clm Stat: OP PAYINP REOPNI
Pymt Amt : 0.00
Pymt # : 30534627 Payee Name: Sheri Garay

Release Dt: 12/27/2007 Mailee : Sheri Garay
Status : PAID Schd Type : RGR 3326 DORAL COURT
Pymt Text : 311 Walnut Creek, CA 94598-3643
Sp Routing:
Created : CWX04
Approved :
Reissued : Pymt Period: 12/04/2007 - 01/03/2008 Mthly Basis: 30-Day
PR/
ST Text

Comp Desc	Begin Dt	End Dt	Amount	ST Text
Basic Benefit	12/04/2007	01/03/2008	4,997.44	
Primary Social Security	12/04/2007	01/03/2008	-1,838.00	
Overpayment Reduction	12/04/2007	01/03/2008	-3,159.44	

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
	F9=FindClm	F10=Nav	F11=BASMenu

BBOP

Overpayment

BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Ovrpym Amt: 6,403.72 Reason: OTH Recvry Mthd: RVR Monthly Amt: 3159.00
Bal Due . : 84.84

Whose \$? : CLN
Tax Yr Begin Dt End Dt Amount Balance Due
2006 01/01/2006 12/31/2006 6,403.72 84.84

Tax Detail : Y

Overpayment Recovery: Below Action: (1=Payment History Detail)
Act Type Pymt # Receive Dt Amount Acct Stat Status Dt
____ OVRVR 030534627 12/27/2007 3,159.44 _____ 12/27/2007
____ OVRVR 030284251 11/27/2007 3,159.44 _____ 11/27/2007

Command ==> 12

F1=Help F3=Exit F4=SelOP F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBEP Existing Policyholders on BAS BENEFITS

Enter Action and press Enter.

Pol No: 00108121

Below Action: (1=Policyholder 2=PH Reports 3=STD PH Info
4=SI STD PH Info 5=PH Reports2 6=Avail PH Ctcs 7=Report Groups
8=Pay Groups 9=SI LTD PH Info)

Act Div	Policyholder Name	Policyholder Name 2
0000	NEW AGE OPTICAL DBA	SITE FOR SORE EYES
0001	NEW AGE OPTICAL DBA	SITE FOR SORE EYES

Command ==>

F1=Help

F3=Exit

F9=FindClm

F11=BASMenu

F6=Cancel

BBPS

Program Status

LTD BENEFITS

Claimant: Garay, Sheri

Clm Stat: OP PAYINP REOPNI

Act	Create Dt	User	Off	Eff Dt	Program ID	Status
	10/04/2007	CWX04	G122	03/01/2005	Social Securit	Awarded
	11/20/2007	CBH04	E112		Triaged @ Xfer	Recertify in 24 months

Command ===>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCM

Claimant

BENEFITS

Tax ID : 051-46-2747 Tax ID Juris: US
Last . : Garay First . . : Sheri
Mid . : Prefix . . : MS Suffix . :
Bth Dt : 07/17/1952 Gender . . : F Education :

Addr1 : 3326 DORAL COURT Addr Upd : 06/20/2002
Addr2 : C3MLC
Addr3 :
City . : Walnut Creek ST/PR . . : CA
Zip . : 94598-3643 Ctry . : US Skip Scrub: N
Phone : (925) 935-4847 Ext . : Ctry Cd . :
Fax . : () Ext . : Ctry Cd . :

Dth Dt : Lang . : en US For.Nat'l : N

Bank # : 121042882 Sav/Chk: CHK Account # : 6772569635

Command ===>
F1=Help F2=Temp F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBMC

Manage Claim

BENEFITS

Claimant: Garay, Sheri
Clm ID : 0099872770

Clm Stat: CL TERM 181
Stat Dt : 09/02/2007

Page: 002
More: -

Hire Dt . . : 11/01/1989 Dis Dt . . : 09/04/2003 1st Treat Dt: _____
EE Eff Dt : 10/01/1995 Last Wrk Dt: 09/03/2003 1st Hosp Dt : _____
Benefit Dt : 09/04/2003 Delivery Dt : _____
EE ID . . : _____
Policy . . : 00108121 Div . . . : 0001 Product . . : MINI LTD TRUST
Elig Group : 001 Choice . . : _____ Product Line: LTD
Report Loc : _____ Report Group: _____
Occ Code . : 279 Job Title : Sales- Optician
Pri ICD9 . : 722.10 ICD9 Desc : DISPLACEMENT OF LUMBAR INTERVERTEBRAL DI
Sec ICD9 . : _____ Ill/Inj . : ILL Work Rlt: N Work Type . : _____
Receive Dt : 12/27/2003 EE Form . : Y ER Form : Y Medical Info : Y
Rider . . : _____

Command ==>

F1=Help	F2=LogWarns	F3=Exit	F5=Popup	F6=Cancel
F7=PrevClm	F9=FindClm	F10=Nav	F11=BASMenu	

BBC2

Manage Claim 2

BENEFITS

Claimant: Garay, Sheri Clm Stat: CL TERM 181
Clm ID : 0099872770
Dis Dt . : 09/04/2003 Dis Age . : 51 Curr Age : 55
Policy . : 00108121 Time Accum : 42 M 0 D Total Paid: 151,560.46
Div . : 0001 Div Name . : NEW AGE OPTICAL DBA
Div Eff : 10/01/1995 Div Term . :
Def Of Dis : 2 YEAR OWN OCC W/RESIDUAL

EE Post-Tax%: 100.00 Earnings: 9045.03 Mode . : MO
Plan EP: 180 D 03/01/2004 Plan Dur: 07/16/2017
Ovrd EP: D 65 A
Ovrd Dur: - - D

Res Dt . : 07/16/2017 Part RTW Dt:
Work Unit: ADL Loss . : N Full RTW Dt:

Command ==>
F1=Help F3=Exit F5=Popup F6=Cancel
F9=FindClm F10=Nav F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	User	Off	Eff Dt	Evt Type	Reason	Cancel Avy? . : _
10/04/2007	CWX04	G122	09/02/2007	CL Termination	181 Not Elig/Coverage	
04/30/2004	C22JP	GORT		OP Payment in proc	Liability accepted	
12/29/2003	C13HM	PINT		OP Ready for liabi		
12/29/2003	C13HM	PINT		NT Missing require		

Command ==>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	Us	BB15	User Detail	LTD BENEFITS
10/04/2007	CW	User	: CWX04	1 Avy? . : _
04/30/2004	C2	User Name	: Popovich, Philip	/Coverage
12/29/2003	C1	Ben Office	: G122	cepted
12/29/2003	C1		F3=Exit	F6=Cancel

E7312 Invalid PF Key.

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
	F9=FindClm	F10=Nav	F11=BASMenu

BBCS

Claim Status

BENEFITS

Claimant: Garay, Sheri

Create Dt	Us	BB15	User Detail	LTD BENEFITS
10/04/2007	CW	User	: C22JP	
04/30/2004	C2	User Name	: Petsche, Jason	1 Avy? . : _
12/29/2003	C1	Ben Office	: GLC	/Coverage
12/29/2003	C1			cepted
		F3=Exit	F6=Cancel	

=====

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
	F9=FindClm	F10=Nav	F11=BASMenu

BBRC

Regular Payment Components

BENEFITS

```

-----
Claimant : Garay, Sheri          Clm Stat : CL TERM 181
Pynt Mode: Monthly             EP End Dt: 03/01/2004
Basic Ben: 5,427.02             Dur Dt . : 07/16/2017
Min Ben : 542.70                Owner . : CWX04
Pens Ben : .00
Comp  Comp Desc  Begin Dt  End Dt      Amount      PR D
BB     Basic Benefit  03/02/2004  07/16/2017    5,427.02    Pay / e
PSS    Primary Social Se 03/01/2005  07/16/2017   -1,838.00    To ST 1
OVPR   Overpayment Reduc 02/02/2007  10/01/2007   -3,589.02    CLN ---
OVPR   Overpayment Reduc 10/02/2007  11/01/2007   -2,050.77    CLN ---
-----

```

Command ==>

F1=Help F3=Exit F5=Popup F6=Cancel
 F9=FindClm F10=Nav F11=BASMenu

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page :001

More : +

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pynt #	Pynt Type	Bank	Status	Status Dt
—	08/28/2007	CLN	0.00	29503404	EOB	Fleet	PAID	08/28/2007
—	07/28/2007	CLN	0.00	29237150	EOB	Fleet	PAID	07/28/2007
—	06/27/2007	CLN	0.00	28972809	EOB	Fleet	PAID	06/27/2007
—	05/28/2007	CLN	0.00	28713738	EOB	Fleet	PAID	05/28/2007
—	04/26/2007	CLN	0.00	28446065	EOB	Fleet	PAID	04/26/2007
—	03/28/2007	CLN	0.00	28199452	EOB	Fleet	PAID	03/28/2007
—	02/24/2007	CLN	0.00	27927008	EOB	Fleet	PAID	02/24/2007
—	01/27/2007	CLN	0.00	27685373	EOB	Fleet	PAID	01/27/2007
—	12/28/2006	CLN	3,589.02	27452949	EFT	Fleet	PAID	12/28/2006
—	11/27/2006	CLN	3,589.02	27184520	EFT	Fleet	PAID	11/27/2006
—	10/28/2006	CLN	5,427.02	26932432	EFT	Fleet	PAID	10/28/2006

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

07:20:00 Thu Jan 24, 2008

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Cln Stat: CL TERM 181

Page :002

More :- +

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pymt #	Pymt Type	Bank	Status	Status Dt
---	09/27/2006	CLN	5,427.02	26669737	EFT	Fleet	PAID	09/27/2006
---	08/28/2006	CLN	5,121.99	26407318	EFT	Fleet	PAID	08/28/2006
---	07/27/2006	CLN	4,449.83	26135193	EFT	Fleet	PAID	07/27/2006
---	06/27/2006	CLN	4,427.02	25878781	EFT	Fleet	PAID	06/27/2006
---	05/27/2006	CLN	4,427.02	25613813	EFT	Fleet	PAID	05/27/2006
---	04/27/2006	CLN	4,427.02	25359914	EFT	Fleet	PAID	04/27/2006
---	03/28/2006	CLN	4,427.02	25094877	EFT	Fleet	PAID	03/28/2006
---	02/25/2006	CLN	4,427.02	24830597	EFT	Fleet	PAID	02/25/2006
---	01/28/2006	CLN	4,427.02	24583585	EFT	Fleet	PAID	01/28/2006
---	12/28/2005	CLN	4,427.02	24329318	EFT	Fleet	PAID	12/28/2005
---	11/26/2005	CLN	4,427.02	24054162	EFT	Fleet	PAID	11/26/2005

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F8=Fwd

F9=FindCln

F10=Nav

F11=BASMenu

07:20:01 Thu Jan 24, 2008

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Cln Stat: CL TERM 181

Page :003

More :- +

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pymt #	Pymt Type	Bank	Status	Status Dt
---	10/27/2005	CLN	4,427.02	23798468	EFT	Fleet	PAID	10/27/2005
---	09/27/2005	CLN	4,427.02	23537089	EFT	Fleet	PAID	09/27/2005
---	08/27/2005	CLN	4,427.02	23265423	EFT	Fleet	PAID	08/27/2005
---	07/28/2005	CLN	4,427.02	23012169	EFT	Fleet	PAID	07/28/2005
---	06/27/2005	CLN	4,427.02	22735097	EFT	Fleet	PAID	06/27/2005
---	05/28/2005	CLN	4,427.02	22478493	EFT	Fleet	PAID	05/28/2005
---	04/30/2005	CLN	4,427.02	22228875	EFT	Fleet	PAID	04/30/2005
---	03/28/2005	CLN	4,427.02	21938647	EFT	Fleet	PAID	03/28/2005
---	02/28/2005	CLN	4,427.02	21695058	EFT	Fleet	PAID	02/28/2005
---	01/27/2005	CLN	4,427.02	21417261	EFT	Fleet	PAID	01/27/2005
---	12/29/2004	CLN	4,427.02	21173038	EFT	Fleet	PAID	12/29/2004

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F8=Fwd

F9=FndCln

F10=Nav

F11=BASMenu

BBPH

Payment History

BENEFITS

Enter Action and press Enter.

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page :004

More :-

Below Action: (1=Pymt Hst Detail 2=EOB Copies 3=Stops and Reversals)

Act	Release Dt	Payee	Amount	Pynt #	Pynt	Type	Bank	Status	Status Dt
—	11/27/2004	CLN	4,427.02	20899446	EFT	Fleet	PAID	11/27/2004	
—	10/28/2004	CLN	4,427.02	20643184	EFT	Fleet	PAID	10/28/2004	
—	09/27/2004	CLN	4,427.02	20365466	EFT	Fleet	PAID	09/27/2004	
—	08/30/2004	CLN	4,427.02	20121168	EFT	Fleet	PAID	08/30/2004	
—	08/02/2004	CLN	4,427.02	19876453	EFT	Fleet	PAID	08/02/2004	
—	07/19/2004	CLN	4,427.02	19751259	EFT	Fleet	PAID	07/19/2004	
—	07/14/2004	CLN	13,281.06	19709290	EFT	Fleet	PAID	07/14/2004	

Command ==>

F1=Help

F3=Exit

F5=Popup

F6=Cancel

F7=Bkwd

F9=FindClm

F10=Nav

F11=BASMenu

BBHD

Payment History Detail

BENEFITS

Claimant: Garay, Sheri Clm Stat: CL TERM 181
Pymt Amt : 0.00
Pymt # : 29503404 Payee Name: Sheri Garay

Release Dt: 08/28/2007 Mailee :
Status : PAID Schd Type : RGR
Pymt Text : 311

Sp Routing:

Created : CWX04

Approved :

Reissued : Pymt Period: 08/02/2007 - 09/01/2007 Mthly Basis: 30-Day
PR/
ST Text

Comp Desc	Begin Dt	End Dt	Amount	ST Text
Basic Benefit	08/02/2007	09/01/2007	5,427.02	
Primary Social Security	08/02/2007	09/01/2007	-1,838.00	
Overpayment Reduction	08/02/2007	09/01/2007	-3,589.02	

Command ==>

F1=Help	F3=Exit	F5=Popup	F6=Cancel
	F9=FindClm	F10=Nav	F11=BASMenu

07:20:12 Thu Jan 24, 2008

BBOP

Overpayment

BENEFITS

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Page: 001

More: +

Ovrpym Amt: 36,821.27 Reason: SSA Recvry Mthd: RVR Monthly Amt: 3589.00

Bal Due . : 0.00

Whose \$? : CLN

Tax Yr	Begin Dt	End Dt	Amount	Balance Due
2006	01/02/2006	11/01/2006	18,380.00	0.00
2005	01/02/2005	01/01/2006	18,441.27	0.00

Tax Detail : Y

Overpayment Recovery:

Below Action: (1=Payment History Detail)

Act	Type	Pynt #	Receive Dt	Amount	Acct	Stat	Status Dt
---	WVEOTH		09/10/2007	5,639.79	---	---	09/10/2007
---	OVRVR	029503404	08/28/2007	3,589.02			08/28/2007
---	OVRVR	029237150	07/28/2007	3,589.02			07/28/2007

Command ==>

F1=Help

F8=Fwd

F3=Exit

F9=FindClm

F4=SelOP

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

BBPS

Program Status

LTD BENEFITS

Claimant: Garay, Sheri

Clm Stat: CL TERM 181

Act	Create Dt	User	Off	Eff Dt	Program ID	Status
	03/15/2004	C22JP	GORT	03/15/2004	ERISA	Extension Requested
	09/14/2006	CBH04	E112		Triaged @ Xfer	Sent to Complex
	07/13/2006	CBH04	E112		Triaged @ Xfer	Sent to Complex

Command ==>

F1=Help

F3=Exit

F9=FindClm

F10=Nav

F5=Popup

F11=BASMenu

F6=Cancel

PROOF OF SERVICE BY MAIL

I am employed at Rimac & Martin, 1051 Divisadero Street, San Francisco, California 94115. I am over the age of 18 years and am not a party to this action.

On February 21, 2008, I served the within **NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT; CERTIFICATION OF INTERESTED ENTITIES OR PERSONS; CIVIL CASE COVER SHEET** on the interested parties hereto by placing said document in a sealed envelope with first class postage fully prepaid thereon, and depositing same with the U.S. Postal Service at San Francisco, California, addressed as follows:

John F. Martin, Esq.
Law Offices of John F. Martin
3100 Oak Road, Suite 230
Walnut Creek, CA 94596

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed February 21, 2008, at San Francisco, California.


Karl H. Plischke